IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.98 OF 2006

IN

SUMMARY SUIT NO.1119 OF 2005

Haresh Hotchand Bakshani ...Plaintiff.

vs.

Javarappa H. Gawda. ...Defendant.

Mr.B.S.Chandnani, for Plaintiff.

Mr.Jayesh Bhatt, for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 26th June, 2006.

P.C.:-

1. The plaintiff has filed the suit for recovery of the amount of Rs. 3,80,000/- together with the interest. According to the plaintiff, the amount of Rs.3,80,000/- was due from the defendant to the plaintiff and therefore, the defendant has issued cheque dated 15.11.2003 for Rs.3,80,000/- in favour of the plaintiff. When the cheque was presented

to the bank for payment, it was dishonoured. Thus, the suit of the plaintiff is based on the negotiable instrument viz. dishonoured cheque. According to the plaintiff, the defendant was served with the demand notice, that demand notice was also not complied with. The defendant has filed a reply. According to the defendant, the defendant was not having any deal with the plaintiff , but he was having deal with the elder brother of the plaintiff by name Mr.Gulabrai Baxani and that the defendant had borrowed in or about the year 1999 some amount from Mr.Gulabrai and as a security the defendant had handed over blank cheque bearing no.132823 duly signed by the defendant to said Mr.Gulabrai. According to the defendant, the amount borrowed by the defendant from Mr.Gulabrai was repaid to said Mr.Gulabrai but he did not return the cheque. According to the defendant, it is that blank cheque which is being misused by the plaintiff. According to the defendant, the said Mr.Gulabrai to whom the blank cheque signed by defendant was given is no more. The defendant denies that the defendant has received the demand notice issued by the plaintiff. The defendant also states that after coming to know about the fraud played by the plaintiff, the defendant has filed a criminal case against the plaintiff under Section 465, 468 and 471 of I.P.C. in Metropolitan Magistrate's 8th Court at Esplanade, Bombay. According to the defendant thus the amount is not due.

2. I have heard the learned Counsel appearing for both the sides. The plaintiff is relying on a cheque which is dishonoured by the bank which admittedly is signed by the defendant. The defence of the defendant is that though he has signed the cheque, it was a blank cheque given by him not to the plaintiff but to one Mr.Gulabrai. So far as this version of the defendant is concerned, the defendant does not disclose as to how much amount was borrowed by him from the said Mr.Gulabrai in or about in the year 1999. The defendant has also not disclosed as to when that amount was repaid to the said Mr.Gulabrai. The defendant has also not produced any documents on record to show that the defendant had business relation with said Mr.Gulabrai, as claimed by him. The case of the defendant in the reply is that a blank signed cheque was given to said Mr.Gulabrai in the year 1999. The defendant also states that the cheques issued after the cheque bearing no.132823, from the same cheque book by the defendant were issued in the year 1999, and therefore, according to the defendant, it is clear that the blank signed cheque was given in the year 1999 and not in the year 2003 as claimed by the plaintiff. The defendant himself has filed a copy of the complaint which he had filed against the plaintiff in the criminal court. Perusal of that complaint shows that though the defendant in the affidavit claims that the complaint is filed by the defendant it is not actually filed by the defendant but it appears to have been filed by the son of the defendant. In the complaint it is

stated that the complaint is filed by the son of the defendant on the basis of power of attorney given by his father in his favour. It is clear from the affidavit filed in this suit on behalf of the defendant that the complaint relates to the same cheque on which the suit is based. In relation to that cheque, in paragraph no.2 of the complaint filed on behalf of the defendant in the criminal Court, it is stated that the family of the defendant is engaged in Hotel business. In connection with that business in or around 1993, the defendant used to borrow money from Mr.Gulabrai Baxani elder brother of the plaintiff, and in the year 1993 the suit cheque duly signed but blank was handed over by the defendant to said Mr.Gulabrai. It is further stated that what is borrowed by the defendant from said Mr.Gulabrai was repaid to him in the year 1994 and nothing remained outstanding. According the defendant, at that time Mr.Gulabrai informed the defendant that he has misplaced the cheque and therefore, he cannot return the cheque. Believing that statement, the defendant did not pursue the matter further. The comparison of the affidavit filed in the suit and the complaint filed on behalf of the defendant by the son of the defendant in the criminal Court shows that according to the affidavit filed in the suit the amounts borrowed from Mr.Gulabrai were repaid to him but the year when that repayment took place is not mentioned, whereas in the complaint the amounts are claimed to have been borrowed from Mr.Gulabrai in the year 1993 and the repayment was allegedly made in

the year 1994. If the cheque was given in the year 1993 as alleged in the complaint, the bank statement on which reliance is placed in the reply submitted in this suit looses its significance. As the defendant has put up two contradictory versions of the transaction in his affidavit and in the complaint filed in the criminal Court, it was for the defendant himself to explain in his affidavit as to how these contradictory versions are to be reconciled. Perusal of the affidavit, however, shows that not even an attempt has been made to reconcile these contradictory versions and therefore, in my opinion, in view of the apparent contradiction in the defence put up by the defendant, the entire defence becomes incapable of being accepted.

3. The learned Counsel appearing for defendant submits that because he has stated in his reply that a blank cheque was given by the defendant to the plaintiff and as the plaintiff has not filed rejoinder, it becomes an admitted position that the blank cheque was given. In my opinion, the submission is not well founded, because in the beginning itself the learned Counsel appearing for plaintiff has submitted that he is proceeding on the basis of denial of the allegations made in the reply filed by the defendant. In my opinion, in any case in the face of the unexplained contradiction in the stands taken by the defendant, it is obvious that the defence put up by the defendant is clearly an afterthought and the defendant is putting up this defence because he

is not in a position to pay the amount. The learned Counsel appearing for defendant also relied on the judgment of the learned Single Judge of the Andhra Pradesh High Court to contend that when a blank cheque is given and it is dishonoured, it does not amount to offence under Section 138 of the Negotiable Instrument Act. In my opinion, as the defendant has totally failed to put up credible defence to show that he had handed over a blank signed cheque to a third person, the defendant cannot rely on the judgment referred to above. I find that the suit of the plaintiff is based on the cheque which is admittedly signed by the defendant and as I find that the defence put up by the defendant utterly lacks substance, the defendant is not entitled to leave to defend the suit. As the defendant is not entitled to defend the suit, the plaintiff becomes entitle to a judgment. The summons for judgment is, therefore, granted. The suit of the plaintiff is decreed in terms of the prayer clause of the suit. Refund of Court fees as per rules.